



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 13 2007

REPLY TO THE ATTENTION OF

(AE-17J)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Richard L. Dickinson  
Manager of Environmental Sciences  
Tate & Lyle North America  
2200 E. Eldorado Street  
Decatur, Illinois 62525

Dear Mr. Dickinson:

I have enclosed a file stamped Consent Agreement and Final Order (CAFO) which resolves Tate & Lyle Ingredients Americas, Inc. (Tate & Lyle), case docket number CAA-05-2007-0024 As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 13 2007

Pursuant to paragraph 33 of the CAFO, Tate & Lyle must pay the civil penalty within 30 days of the date the CAFO was filed. Your check must display the case docket number, CAA-05-2007-0024, and the billing document number, 2750703A027.

I have also enclosed an executed copy of an Administrative Consent Order between Tate & Lyle and the United States Environmental Protection Agency.

Please direct any questions regarding this case to Cynthia A. King, Associate Regional Counsel, at (312) 886-6831.

Sincerely yours,

A handwritten signature in black ink that reads "William MacDowell".

William MacDowell, Chief  
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	<b>Docket No. CAA-05-2007-0024</b>
	)	
Tate & Lyle Ingredients Americas, Inc. Lafayette, Indiana,	)	<b>Proceeding to Assess a Civil Penalty under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)</b>
	)	
<b>Respondent.</b>	)	
	)	

**RECEIVED  
REGIONAL HEARING CLERK  
US EPA REGION V**

**2007 SEP 13 PM 3:37**

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is Tate & Lyle Ingredients Americas, Inc. (Tate & Lyle), a corporation doing business in Indiana.

4. In accordance with 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Tate & Lyle admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Tate & Lyle waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

**Statutory and Regulatory Background**

9. On June 19, 1978, U.S. EPA promulgated the prevention of significant deterioration (PSD) air quality standards pursuant to Subtitle I, Part C of the Act. These regulations were revised on August 1, 1980 (45 Fed. Reg. 52676), and are codified at 40 C.F.R. § 52.21 (43 Fed. Reg. 26403).

10. Subchapter I, Part C of the Act, and the PSD regulations implementing Part C at 40 C.F.R. § 52.21, prohibit a major stationary source from constructing a modification without first obtaining a PSD permit if the modification is major in that it will result in a significant net increase in emissions of a regulated pollutant, and if the source is located in an area which has either achieved the National Ambient Air Quality Standards (NAAQS) for that pollutant, or has been designated as unclassifiable for that pollutant. Part C at 40 C.F.R. § 52.21(j) further requires, among other things, that a source subject to these PSD regulations shall install Best Available Control Technology (BACT) to control the emissions of each regulated pollutant.

11. Each state must submit to the Administrator of U.S. EPA an implementation plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the

Act, 42 U.S.C. § 7410.

12. On April 7, 1980, U.S. EPA delegated to the Indiana Department of Environmental Management (IDEM) authority to review and process PSD permit applications and to implement the PSD program. 46 Fed. Reg. 9584.

13. On August 7, 1980, U.S. EPA incorporated the provisions of 40 C.F.R. § 52.21(b) through (w) into the Indiana State Implementation Plan (SIP). 40 C.F.R. § 52.793 (45 Fed. Reg. 52741, as amended at 46 Fed. Reg. 9584).

14. On March 3, 2003, U.S. EPA conditionally approved Indiana's PSD SIP, 326 Ind. Admin. Code Rule 2-2. 68 Fed. Reg. 9892.

15. 40 C.F.R. § 52.21(b)(1)(i)(b) defines a "major stationary source" as any stationary source which emits, or has the potential to emit, 250 tons per year (tpy) or more of any air pollutant subject to regulation under the Act.

16. 40 C.F.R. § 52.21(b)(2)(i) defines a "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

17. 40 C.F.R. § 52.21(B)(3)(i) defines "net emissions increase" as "the amount by which the sum of the following exceeds zero:

- (a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and
- (b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable."

18. 40 C.F.R. § 52.21(b)(21) defines "actual emissions" as of a particular date equal to

the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations.

19. 40 C.F.R. § 52.21(b)(23)(i), in relevant part, defines "significant", in reference to a net emissions increase or the potential of a source to emit carbon monoxide (CO) at a rate of emissions that would equal or exceed 100 tpy.

20. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations of the Act that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

21. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

22. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

### **Factual Allegations**

23. Tate & Lyle has a wet corn milling facility at 3300 U.S. 52 South, Lafayette, Indiana (South Plant).

24. The South Plant emits, or has the potential to emit, 250 tpy or more of at least one air pollutant subject to regulation under the Act.

25. In 1995, Tate & Lyle installed a gluten meal dryer, LA-15, at the South Plant.

26. At the time of the installation of the gluten dryer, Tate & Lyle did not obtain a PSD permit or install Best Available Control Technology (BACT).

27. On July 11, 2006, Tate & Lyle conducted an emissions test for CO on LA-15, the gluten dryer. The results of that test demonstrated that the potential CO emissions from gluten dryer, LA-15 were 297.4 tons per year.

#### **Alleged Violations**

28. The South Plant is a major source.

29. The installation of gluten dryer, LA-15, was a major modification that resulted in significant net emission increases of CO.

30. Prior to commencing construction of the gluten meal dryer, LA-15, Tate & Lyle was required to obtain the proper PSD permit and install BACT as required by 40 C.F.R. § 52.21 and the Indiana SIP.

31. Tate & Lyle's failure to obtain a PSD permit and install BACT constitutes a violation of 42 U.S.C. § 7475, 40 C.F.R. Part 52, Section 110 of the Act, 42 U.S.C. § 7410 and the Indiana SIP.

#### **Civil Penalty**

32. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C.

§ 7413(c), the facts of this case, and other factors such as cooperation and prompt return to compliance, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$188,100.

33. Tate & Lyle must pay the \$188,100 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

34. Tate & Lyle must send the check by regular U.S. mail to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 371099M  
Pittsburgh, PA 15251-7531

35. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Cynthia A. King, C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.

Chicago, Illinois 60604-3511

36. This civil penalty is not deductible for federal tax purposes.

37. If Tate & Lyle does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

38. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Tate & Lyle will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Tate & Lyle will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

#### **Final Statement**

39. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Alleged Violations section of this CAFO.

40. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

41. This CAFO does not affect Tate & Lyle's responsibility to comply with the Act and other applicable federal, state, and local laws and regulations. Except as provided in Paragraph



39 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

42. Tate & Lyle certifies that it is complying fully with the PSD regulations.

43. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Tate & Lyle's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

44. The terms of this CAFO bind Tate & Lyle, its successors, and its assignees.

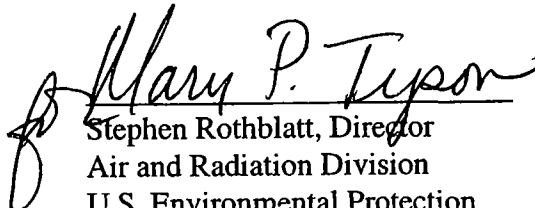
45. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

46. Each party agrees to bear its own costs and attorneys' fees in this action.

47. This CAFO constitutes the entire agreement between the parties.

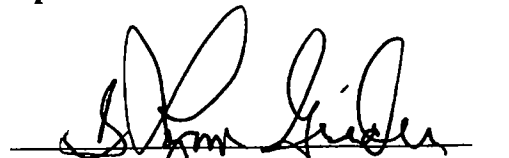
**U.S. Environmental Protection Agency, Complainant**

9/10/07  
Date

  
Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

**Tate & Lyle Ingredients Americas, Inc., Respondent**

\_\_\_\_\_  
Date

  
D. Lynn Grider, President  
Tate & Lyle Ingredients Americas, Inc.

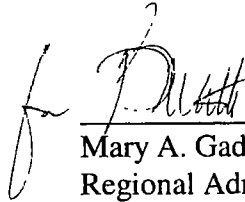
**CONSENT AGREEMENT AND FINAL ORDER**

**Tate & Lyle Ingredients Americas, Inc.**

**Docket No. CAA-05-2007-0024**

**Final Order**

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

A handwritten signature in black ink, appearing to read "M. Gade", is written over a horizontal line.

Mary A. Gade  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

CERTIFICATE OF SERVICE

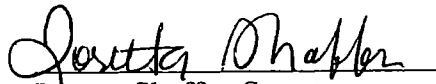
I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, docket number CAA-05-2007-0024 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Tate & Lyle Ingredients Americas, Inc. by placing them in the custody of the United States Postal Service addressed as follows:

Richard L. Dickinson  
Manager of Environmental Sciences  
Tate & Lyle North America  
2200 E. Eldorado Street  
Decatur, Illinois 62525

Madonna McGrath  
Baker and Daniels, LLP  
300 North Meridian Street, Suite 2700  
Indianapolis, Indiana 46204

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on the 13<sup>th</sup> day of Sept, 2007.

  
Loretta Shaffer, Secretary  
AECAS (MN/OH)

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6. On August 7, 1980, U.S. EPA incorporated the provisions of 40 C.F.R. § 52.21(b) through (w) into the Indiana State Implementation Plan (SIP). 40 C.F.R. § 52.738 (45 Fed. Reg. 52741, as amended at 46 Fed. Reg. 9584).

7. On March 3, 2003, U.S. EPA conditionally approved Indiana's PSD SIP, 326 Indiana Administrative Code (IAC) Rule 2-2, (68 Fed. Reg. 9892).

8. 40 C.F.R. § 52.21(b)(1)(i)(b) defines a "major stationary source" as any stationary source which emits, or has the potential to emit, 250 tons per year (tpy) or more of any air pollutant subject to regulation under the Act.

9. 40 C.F.R. § 52.21(b)(2)(i) defines a "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

10. 40 C.F.R. § 52.21(B)(3)(i) defines "net emissions increase" as "the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable."

11. 40 C.F.R. § 52.21(b)(21) defines "actual emissions" as of a particular date equal to the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations.

12. 40 C.F.R. § 52.21(b)(23)(i) defines "significant", in reference to a net emissions increase or the potential of a source to emit carbon monoxide at a rate of emissions that would equal or exceed 100 tons per year.

13. Under Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), the Administrator of U.S. EPA may issue an order requiring compliance to any person who has violated or is violating a SIP. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

### **Findings**

14. Tate & Lyle owns and operates a wet corn mill at 3300 U.S. 52 South, Lafayette, Indiana (South Plant).

15. The Indiana facility is located in Tippecanoe County, Indiana, an area designated as unclassifiable/attainment for the National Ambient Air Quality Standards (NAAQS) for

carbon monoxide (CO). 40 C.F.R. § 81.315.

16. The South Plant emits, or has the potential to emit, 250 tpy or more of at least one air pollutant subject to regulation under the Act, and is a major stationary source.

17. In 1995, Tate & Lyle installed a gluten meal dryer (LA-15) at the South Plant that had the potential to emit greater than 100 tons of carbon monoxide per year, causing a significant net emissions increase of CO.

18. Tate & Lyle never obtained a PSD permit for the installation of the gluten meal dryer, LA-15, at the South Plant in 1995.

19. On September 19, 2005, U.S. EPA issued to Tate & Lyle a Notice of Violation (NOV) alleging that Tate & Lyle violated the Act at 40 C.F.R. Part 52, 42 U.S.C. § 7475, and the Indiana SIP.

20. On November 3, 2005, and several dates thereafter, representatives of Tate and Lyle and U.S. EPA met to discuss the September 19, 2005 NOV.

### **Compliance Program**

21. Within one year of the date of signature by the Director of the Air and Radiation Division of this Order, Tate & Lyle must submit a permit application for the South Plant that complies with Best Available Control Technology requirements, as defined at 40 C.F.R. § 52.21(b)(12), and requests the following BACT-level emission limits for the dryers:

- a) a 95 percent reduction of volatile organic compounds (VOC) or emissions no higher than 10 parts per million (ppm) of VOC; and
- b) a 90 percent reduction of carbon monoxide (CO) emissions or emissions no higher than 100 ppm CO.

22. In its permit application for the installation of control equipment necessary to achieve the BACT-level emission limits at the South Plant or any subsequent permit applications for the South Plant, Tate & Lyle will not use any emission reductions achieved from the operation of the control equipment to meet the emission limits outlined in Paragraph 21 above for netting purposes as defined by 40 C.F.R. § 52.21(b)(3).

23. The emission reductions of VOC and CO achieved by the installation of control equipment to meet the BACT-level emissions outlined in Paragraph 21 above, may not be used for any emissions offset, banking, selling, or trading program.

24. Within one hundred and eighty days (180) days of the effective date of this Order,

Tate & Lyle will submit to U.S. EPA a progress report regarding the status of its submittal of its permit application.

25. Tate & Lyle must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604.

### **General Provisions**

26. This Order does not affect Tate & Lyle's responsibility to comply with other local, state, and federal laws and regulations.

27. This Order does not restrict U.S. EPA's authority to enforce the Indiana SIP, or any section of the Act.

28. Nothing in this Order limits U.S. EPA's authority to seek appropriate relief, including penalties under Section 113 of the Act, 42 U.S.C. § 7413, for violations of the Act.

29. Failure to comply with this Order may subject Tate & Lyle to penalties of up to \$32,500 per day for each violation under § 113 of the Act, 42 U.S.C. § 7413, and 69 Fed. Reg. 7121 (Feb. 13, 2004)(amended 40 C.F.R. Part 19).

30. The terms of this Order are binding on Tate & Lyle, its assignees, and its successors. Tate & Lyle must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to U.S. EPA, at the above address, that Tate & Lyle has given the notice.

31. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic record keeping efforts, please provide your response to this Order without staples. Paper clips, binder clips, and 3-ring binders are acceptable.


32. U.S. EPA may use any information submitted under this Order in an administrative, civil, or criminal action.

33. Tate & Lyle agrees to the terms of this Order.


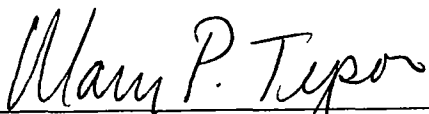
34. This Order is effective on the date of signature by the Director of the Air and

Radiation Division. This Order will terminate one year from the effective date, provided that Tate & Lyle has complied with all terms of the Order throughout its duration.

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
D. Lynn Grider, President  
Tate & Lyle Ingredients Americas, Inc.

9/10/07  
Date

   
\_\_\_\_\_  
Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)



CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent the Administrative Consent Order, EPA Order No. EPA-5-07-113(a)-IL-04, by Certified Mail, Return Receipt Requested, to:

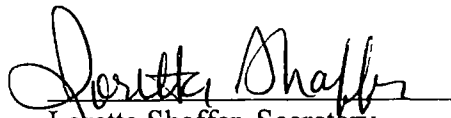
Richard L. Dickinson  
Manager of Environmental Sciences  
Tate & Lyle North America  
2200 E. Eldorado Street  
Decatur, Illinois 62525

Madonna McGrath  
Baker and Daniels, LLP  
300 North Meridian Street, Suite 2700  
Indianapolis, Indiana 46204

I also certify that I sent a copy of the Administrative Consent Order EPA Order No. :

David McIver, Chief  
Office of Enforcement Air Section  
Indiana Department of Environmental Management  
100 North Senate Avenue, Room 1001  
Indianapolis, Indiana 46206-6015

on the 13 day of Sept 2007.

  
Loretta Shaffer, Secretary  
AECAS(MN/OH)

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